

Members

Rep. Thomas Kromkowski, Chairperson  
Rep. Ron Liggett  
Rep. Lawrence Buell  
Rep. Richard Mangus  
Sen. Joseph Harrison  
Sen. R. Michael Young  
Sen. Allie Craycraft  
Sen. Larry Lutz  
Bruce Schweizer  
William Gettings, Jr.  
Steve Meno  
Kip White



# PENSION MANAGEMENT OVERSIGHT COMMISSION

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Authority: IC 2-5-12-1

## MEETING MINUTES<sup>1</sup>

**Meeting Date:** August 31, 2004  
**Meeting Time:** 10:00 A.M.  
**Meeting Place:** State House, 200 W. Washington St.,  
Room 404  
**Meeting City:** Indianapolis, Indiana  
**Meeting Number:** 1

**Members Present:** Rep. Thomas Kromkowski, Chairperson; Rep. Ron Liggett; Rep. Lawrence Buell; Rep. Richard Mangus; Sen. Joseph Harrison; Sen. R. Michael Young; Sen. Allie Craycraft; Sen. Larry Lutz; Bruce Schweizer; William Gettings, Jr.; Steve Meno; Kip White.

**Members Absent:** None.

Representative Thomas Kromkowski, chair of the Pension Management Oversight Commission (the Commission), called the meeting to order at 10:00 a.m. He introduced the members and staff of the Commission and called on Tom Miller of the Professional Firefighters Union to present the first topic assigned to the Commission.

### **I. Benefits for Public Safety Officers Who Develop Cancer or Heart Conditions That Are Related to Their Duties**

Mr. Miller described his service as chair of the 1977 Fund advisory committee. While serving on

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

the committee, he has noticed that firefighters have an unusually high incidence of cancer and heart disease. He stated that Tom Hanify and Chuck Sosbe of the Professional Firefighters Union of Indiana and Leo Blackwell representing the Fraternal Order of Police support today's presentations by Mary Beth Braitman of Ice Miller and Richard Duffy, Assistant to the General President of the International Association of Firefighters.

#### A. Mary Beth Braitman's Testimony

Ms. Braitman introduced and put the topic in context. She distributed and explained a summary of the current law concerning public safety disability benefits in Indiana and the proposed restructuring of those benefits to add a presumption that disabilities caused by certain cancers, heart disease, and lung conditions are duty-related (Exhibit 1).

If the proposed presumptions are enacted, the board of trustees of the Public Employees' Retirement Fund (PERF), which administers the 1977 Police Officers' and Firefighters' Retirement Fund (1977 Fund), will ask the Internal Revenue Service to declare the disability benefits nontaxable. A declaration that the disability benefits paid by the pre-1977 pension funds and the 1977 Fund are nontaxable will change the tax treatment of the disability benefits, but will not change the calculation of the benefits or increase the funds' liabilities.

Ms. Braitman further explained that the proposed changes would continue the nontaxable treatment of a member's benefits for the lifetime of a fund member who suffers a duty-related disability. Current law requires that the disability benefit be converted to a regular taxable retirement benefit when the member reaches age 55.

#### B. Richard Duffy's Testimony

Richard Duffy, Assistant to the General President at the International Association of Firefighters, discussed his written testimony concerning various illnesses to which public safety and emergency response personnel, firefighters in particular, may be subjected to while performing their duties (Exhibit 2). He related that over twenty states and Canadian provinces have legislation in process or have adopted a presumption that a firefighter's cancer is occupationally induced. Thirty-nine states have laws recognizing that if a firefighter develops heart or lung disease it is duty-related.

##### 1. Cancer

Firefighters routinely have significant exposures to chemicals and other hazardous agents in the line of duty. In addition to active firefighting where a firefighter contends with extreme heat and smoke, a firefighter also looks for "hot spots" in damaged structures, destroys buildings while attempting to determine the cause of fires, performs clean-up after fires and spills of hazardous substances, and spends long hours in firehouses where equipment powered by diesel fuel is garaged. In all of these activities, a firefighter has the potential for exposure to carcinogenic agents.

Mr. Duffy testified that the list of the potential carcinogens to which a firefighter may be exposed is very long. For example, benzene is firmly established as a human carcinogen and is present at every fire. Asbestos, which is safe until it is broken up and released into the air, is present in many buildings, such as the World Trade Center, and many homes. Polycyclic aromatic hydrocarbons are present at every fire and in diesel fuel. Other agents, such as formaldehyde and various synthetic chemicals, are also possible carcinogens.

In addition, firefighters routinely are exposed to multiple carcinogenic agents, some that are known and others that have not been identified, studied, or tested. Despite the risk, firefighters

often enter potential toxic atmospheres without adequate protection or knowledge of the environment.

Mr. Duffy reported on firefighter mortality studies (Exhibit 3). Firefighters tend to be healthier than the general population and have low all-cause mortality rates. Therefore, the cancer mortality rate could be expected to be lower than the general population, but it's not. Epidemiological studies are more likely to dilute or mask associations between occupational exposures of firefighting and cancer than to create false positive associations. These studies may not include firefighters diagnosed with cancer after retirement, and death certificate information may be missing or incomplete. Finally, the number of people in a study may not be large enough to report "statistically significant" conclusions even though a relationship between the exposure and the disease may be present. Given all of these factors, the studies show a positive correlation between firefighting and cancer.

Some specific types of cancer occur more frequently in firefighters: brain cancer, cancers of the digestive system, genitourinary tract cancer, blood and lymphatic systems cancers, skin cancer/melanoma, multiple myeloma, and respiratory cancer. Digestive system cancers occur because firefighters can not always wear respirators and frequently swallow soot and other particles to which carcinogens adhere. Chimney sweeps have a greater than expected risk of testicular cancer because of the soot and other substances that they encounter on the job. Firefighters have an increased risk of this type of cancer for the same reasons. Women firefighters have a higher incidence of cancers of their reproductive systems as well.

## 2. Heart and Lung Disease

Mr. Duffy testified that various studies have shown that heart disease is occupationally linked to firefighting. The reasons for the linkage include the exposure to carbon monoxide, which is present at every fire, and other chemicals, and the noise and stress connected with firefighting. Lung disease has also been occupationally linked to firefighting, although respirators help.

Mr. Duffy related that the experiences at the World Trade Center have contributed greatly to the knowledge of the linkages between firefighting and cancer, heart disease, and lung disease. He reported that efforts are underway in twenty states to enact a presumption that cancer is duty-related to firefighting. Thirty-nine states already have laws creating a presumption that heart disease is occupationally related to firefighting. Some states have made changes to their worker's compensation statutes to cover this. Mr. Duffy further testified that adopting these presumptions in Indiana would not result in significant cost increases.

Mr. Duffy also noted that the International Association of Fire Fighters is working proactively with firefighters to improve their health by promoting firefighter fitness and smoking cessation.

Senator Young asked whether the studies have distinguished between smokers and nonsmokers and the incidence of lung cancer. Mr. Duffy replied that they have. Firefighter smokers develop lung cancer at a lower rate than smokers in the general population. In response to a question about skin cancer rates, Mr. Duffy stated that firefighters have low rates of skin cancer in the southwestern United States and higher rates in New Jersey and New Brunswick. Firefighter turnout gear protects against heat but not chemicals in a fire.

Senator Young asked whether the studies factor in any other employment that a firefighter may have. Mr. Duffy said that the studies looked at the participants' primary employment. Mortality studies look at death certificates. In response to a question as to whether truck drivers have higher rates of cancer, Mr. Duffy reported that truck drivers and steelworkers have cancer at higher than predicted rates because of occupational exposure to benzene.

Senator Young asked how many exposures to carcinogens are counted to establish causation of cancer and whether there are any studies more recent than 1989 or completed in areas of the United States other than the northwest and northeast. Mr. Duffy was not certain how exposures are counted. He did state that a more recent literature study has been completed in Michigan. Studies are done in locations where universities, interest, and funding are present.

## **II. Child Support Withholding by Public Pension Funds**

Because no one was present to speak on this topic, the Commission did not take any testimony on it.

## **III. Qualified Domestic Relations Orders Applicable to Public Pension Funds**

Representative Duane Cheney addressed the Commission on this topic. He stated that the topic deals with the mechanism, not the amount, of property distributed in a divorce. Currently public pensions are not subject to division in divorce property settlements in Indiana. When other assets are used to satisfy a property settlement, the payment is due immediately and sometimes results in hardship to the divorcing parties, for example, when a home must be sold. Representative Cheney's bill from the 2004 session (HB 1249) would address this issue. It would permit public pension accounts to be divided and payment deferred until the public employee becomes eligible for a benefit. The bill also contains protections for the public pension funds, including hold harmless provisions, immunity for good faith errors, and time to administer a property settlement order.

In response to questions about the administration and ownership of individual annuity savings accounts and other public pension benefits that might be subject to a divorce property settlement order, Representative Kromkowski recognized Ms. Braitman, who explained that federal law requires that separate accounts be set up for and owned by divorcing spouses when a defined contribution plan is involved. Federal law allows a court to order certain future distributions from a defined benefit plan. In either case, there are account or benefit valuation issues. She pointed out that the Commission members' questions illustrate the problems public pension funds would face in administering qualified domestic relations orders.

Senator Young asked whether the public pension funds could make loans to their members to pay a divorce property settlement. Ms. Braitman responded that most Indiana public pension funds don't have this feature, because they are defined benefit plans.

Commission Member White asked whether there are public policy reasons for treating public pension plans differently from private pension plans that are subject to divorce property settlement orders. Ms. Braitman explained that public safety pension funds are established to provide certain benefits for fund members and not with the expectation that divorcing spouses will receive part of those benefits. In response to the same question for teacher pension funds, Ms. Braitman said that teacher pensions are mostly funded by taxpayers who don't expect them to be divided as part of a divorce settlement.

Senator Craycraft asked Representative Cheney whether his bill contained provisions to allow a divorcing spouse to be paid without touching a public employee's pension benefits. Representative Cheney responded that nothing in his bill prohibits the divorcing parties from agreeing to a property division.

## **IV. Excise and Conservation Officer Pensions**

Officer Jeff Wells of the Division of Law Enforcement of the Department of Natural Resources asked that this item be moved to the end of the agenda, because he was waiting for Senator

Robert Meeks to arrive.

## **V. Judges' Retirement System Issues**

Judge Marc Kellams, who is the president of the Indiana Judges Association (IJA) and has been a judge for 24 years, asked the Commission to again consider two issues of interest to the IJA.

The Judges' Retirement System consists of two plans: the 1977 retirement, disability, and death system, and the 1985 retirement, disability and death system. Judge Kellams asked that a cost of living adjustment (COLA) be provided for members of the 1985 system. Currently, a 1985 system member's retirement benefit is set at the time of the member's retirement and the amount never adjusts.

The second issue involves adding full-time magistrates as members of the 1985 system. Currently, these magistrates are members of PERF. Magistrates exercise all of the powers of a judge and should be members of the 1985 system for that reason.

Senator Young asked whether the proposed changes to the Judges' Retirement System would affect the Prosecuting Attorneys' Retirement Fund. Judge Kellams responded that the proposed changes would not affect prosecuting attorneys.

In response to a question, Doug Todd, the actuary for the Judges' Retirement System, described the amount of a judge's pension benefit after various years of service. After completing eight years of service, a judge is entitled to a benefit equal to 24% of the judge's salary. The benefit is equal to 50% of the judge's salary after 12 years of service and increases 1% for each additional year of service to a maximum benefit of 60% for 22 years of service.

Mr. Sperlik was asked to distribute last year's fiscal note for each of these proposals.

Commission Member White asked how many judges are retired and receiving benefits. Judge Kellams did not have these numbers.

## **VI. Other Business**

Representative Liggett asked whether PERF and the Indiana Teachers' Retirement Fund (TRF) have adopted investment policies that prohibit their funds from investing in terrorist organizations. Ms. Braitman responded that it depends upon how "terrorist organization" is defined. Recently, several articles have been published on this topic. Some of these articles are inflammatory. There must be a better set of definitions. The pension funds want to do the right thing, but they cannot have artificial barriers limiting their investments. The largest public pension funds are trying to get national entities, such as the Securities and Exchange Commission, involved in answering these questions on a national basis. Ms. Braitman added that the public pension funds have noticed these concerns and are working to address them.

## **VII. Excise and Conservation Officer Pensions**

Officer Jeff Wells, a law enforcement officer for the Department of Natural Resources, asked for three changes to the current State Excise Police and Conservation Enforcement Officers' Retirement Fund. Two of the proposals would affect the eligibility for and calculation of a fund participant's benefit.

First, a participant would be eligible to retire with an unreduced benefit when the participant's age plus years of service equals at least 85. Currently, a participant must be at least age 55

and meet these age and service requirements to retire with an unreduced benefit.

The second proposal would set the percentage increase in a participant's annual retirement allowance at 1 2/3% of a participant's average annual salary for each completed year of creditable service over 10 years. The current percentage increases are 1 2/3% for each completed year of creditable service over 10 years and less than 25 years and 1% for each completed year of creditable service over 25 years.

The third proposal would require the PERF Board of Trustees, the administrator of the State Excise Police and Conservation Enforcement Officers' Retirement Fund, to establish a deferred retirement option plan (DROP) for plan participants before January 1, 2007.

Representative Kromkowski asked Mr. Sperlik to prepare a fiscal impact statement for these proposals for the Commission's next meeting.

Senator Young asked whether the State Excise Police and Conservation Enforcement Officers' Retirement Fund had the same terms as other law enforcement retirement plans. Officer Wells responded that the terms of the State Excise Police and Conservation Enforcement Officers' Retirement Fund differ from those of other law enforcement retirement plans.

In response to a question by Senator Craycraft, Officer Wells confirmed that, if the first proposal was enacted, a plan participant would be able to retire with a full benefit when the participant's age and years of service totaled 85.

### **VIII. Discussion of Additional Study Topics**

Representative Kromkowski recognized Ms. Braitman who reported that PERF and TRF would like to present a bill draft containing several "housekeeping" changes for the Commission's consideration.

Dr. William Christopher, the Executive Director of TRF, asked for time at the next Commission meeting for TRF's actuaries to report on and discuss TRF's unfunded liability.

Representative Kromkowski stated that he would ask the Commission to consider reducing the vesting requirement for the Prosecuting Attorneys Retirement Fund from 10 to eight years.

Senator Harrison asked that the state auditor have time at the next Commission meeting to report on the state's Deferred Compensation Plan.

Representative Kromkowski instructed any Commission member with a topic for the Commission's consideration to have the idea prepared for discussion at the Commission's next meeting.

### **IX. Next Meeting Date**

Representative Kromkowski scheduled the Commission's next meeting for Wednesday, September 22, 2004, beginning at 10:00 a.m.

Representative Kromkowski adjourned the meeting at 11:20 a.m..

